Norbar, Inc. *and* **Charlie Burge** *and* **Lloyd Tucker** *and* **Robert Crutchfield** *and* **Jeffrey Snodgrass** *and* **Phillip K. Seitz.** Cases 9-CA-15518, 9-CA-15587, 9-CA-15737, 9-CA-16716, and 9-CA-16875

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 29 September 1981 Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions, a supporting brief, a motion to remand, and a memorandum in support of its motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions, brief, motion to remand, and memorandum in support of motion, and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge only to the extent consistent herewith.

Respondent is engaged in over-the-road transportation of the U.S. mail between its facility in Sharonville, Ohio, a suburb of Cincinnati (hereinafter referred to as the Cincinnati facility), and Greensboro, North Carolina, and Dallas, Texas; Respondent's sole customer is the United States Postal Service. Respondent is owned by Hartco, an "open" company which owns a number of companies like Respondent, each operating out of a different major city. Hartco is owned by David A. Hartman, who also is president and chief executive of Respondent.

On 1 February 1980[2] as a result of operating losses at three of four companies, including Respondent, Hartman became directly involved in the day-to-day operations of these companies. Soon thereafter, Hartman held a meeting with the terminal managers from the Cincinnati, Kansas City, and Dallas facilities, during which he explained the companies' precarious financial position and his conclusions as to its cause. Hartman told them that he expected major improvements in four areas and that if they "did not stop and correct this situation, weed out the people who could not be brought into line or sympathy with our objectives, that they [the terminal managers] would be terminated"; and that the four areas in which Hartman expected improvements were (1) care of equipment, (2) selection, training, and disciplining of drivers, (3) on-time service,[3] and (4) fuel mileage. Thereafter, Hartman sent a memo to the employees explaining the companies' financial position and describing the improvements which were expected from each of them. Furthermore, at Respondent's Cincinnati facility, Hartman held an employee meeting during which he further explained Respondent's financial position and answered questions regarding company policies.

In March, Respondent's employees began to meet and discuss their need for union representation. As a result of these discussions, an undisclosed number of employees signed union authorization cards and, in April, a petition for an election was filed with the Board on behalf of Truck Drivers, Chauffeurs and Helpers Local Union No. 100, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. An election was held on 19 and 21 May; the employees voted 26 to 9 in favor of the Union. Although the Board issued a Certification of Representative on 30 May, for reasons not disclosed in the record, contract negotiations did not occur until October; and a contract was executed on 30 October.

This matter arises out of Respondent's actions during the Union's organizational campaign at its Cincinnati facility and, within 1 year of the Union's certification, its discharge of six of its employees who were union supporters. Upon a series of charges filed between 30 June 1980 and 22 May 1981 the General Counsel issued the complaints herein alleging that Respondent violated Section 8(a)(1) and (3) of the Act in various respects.

In his Decision, the Administrative Law Judge found that Respondent violated Section 8(a)(1) of

[1] Both in its exceptions and in its motion to remand, Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. Although, as set forth *infra*, we find that the attached Decision contains a number of significant errors, there is nothing in the record to suggest that these errors are attributable to bias. As the Supreme Court stated in *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Accordingly, we deny Respondent's motion to remand. Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and, with the exception of the errors discussed *infra*, we find no basis for reversing his findings.

[2] Unless otherwise specifically indicated, all further dates herein shall refer to the calendar year 1980.

[3] Under the terms of its contract with Respondent, the United States Postal Service can terminate the contract if Respondent does not meet its service standards. With regard to the timeliness of deliveries, the Postal Service "insists" that at least 95 percent of the deliveries be made within 15 minutes of their scheduled time.

the Act by interrogating its employees about their union interest or sympathies, by giving its employees the impression that their union activities were under surveillance, by threatening to close its facility if its employees selected union representation, by threatening employee Howard Baumer with bodily harm for telephoning employees about union activities, by asking Baumer to drop charges he had filed with the Board, by telling employee Larry Walton not to file for unemployment compensation and implying that he should withdraw such claim, and by threatening to discharge employee Michael Green for accepting the position of union steward and for performing the duties of union steward. The Administrative Law Judge also found that Respondent violated Section 8(a)(3) and (1) of the Act by suspending and/or discharging employees Charlie Burge, Howard Baumer, Lloyd Tucker, and Jeffrey Snodgrass because they engaged in union activity, by discharging employee Michael Green because of his actions as union steward, and by discharging employee Phillip Seitz because of his union activity, including his attempts to become union steward.

In its brief Respondent asserts that the Administrative Law Judge's findings that it violated the Act are based upon both his erroneous credibility resolutions[4] and his failure to consider record evidence regarding the nature of its business and its precarious financial position. Respondent further argues that the Administrative Law Judge improperly drew adverse inferences from the failure of Carol Schafer, its former terminal manager, to testify at the hearing in this matter.

We have carefully examined the record and the attached Decision, and we find that the Administrative Law Judge has committed a number of significant errors; accordingly, we shall discuss each of his findings below.

The 8(a)(1) Findings

With the exception of his finding that Respondent threatened to discharge Michael Green for accepting the position of union steward, each of the Administrative Law Judge's findings that Respondent violated Section 8(a)(1) of the Act is supported by uncontradicted testimony, much of which is mutually corroborative. With regard to Respondent's threat to discharge Green for accepting the position of union steward, the Administrative Law Judge credited Green's specific testimony regarding a telephone conversation with Lloyd Harmon, Respondent's vice president and general manager, over Harmon's general denial that the conversation occurred.[5]

Respondent has excepted to each of the Administrative Law Judge's findings that it violated Section 8(a)(1) of the Act. In its brief, however, Respondent does not address each of the violations found; rather, Respondent primarily relies upon its general assertion that the Administrative Law Judge's credibility resolutions must be rejected and, therefore, there is no evidence to support any of his findings.

We find no merit in Respondent's exceptions in this regard. As set forth above, with one exception, each of the Administrative Law Judge's findings is supported by uncontradicted testimony; we find no basis in the record for rejecting such testimony. Furthermore, we find no basis for questioning the Administrative Law Judge's reliance upon Green's specific testimony regarding his telephone conversation with Harmon; in this regard, we note that Vaughn did not corroborate Harmon's denial that this conversation occurred. Accordingly, we adopt the Administrative Law Judge's findings that Respondent violated Section 8(a)(1) of the Act as set forth above.

The 8(a)(3) Findings

1. The discharges of Charlie Burge and Howard Baumer

In late June 1980, Burge and Baumer were approximately 27 hours late on the Cincinnati-Greensboro run as a result of two mechanical breakdowns, one near Corbin, Kentucky, and the other near Knoxville, Tennessee. Upon their return to Cincinnati, both Burge and Baumer were discharged by then Terminal Manager Carol Schafer allegedly because they waited too long before they sought assistance following their breakdown near Knoxville.

In finding that these discharges were discriminatorily motivated, the Administrative Law Judge rejected President Hartman's testimony that he instructed then Terminal Manager Schafer to discharge Burge and Baumer after she informed him that they did not seek assistance until after a lengthy period of time following their breakdown near Knoxville; the Administrative Law Judge rejected Hartman's testimony in this regard because Schafer did not testify in this matter, Hartman did

[4] See fn. 1, *supra*.

[5] In this regard, Green testified that, on the day he was elected union steward, Plant Manager Ronald Vaughn called him to the telephone to speak with Harmon. According to Green, Harmon stated, "Congratulations or condolences, which is it? . . . Are you sure you want to take the job as union steward? You know it could cost you your job?" Harmon denied that this telephone conversation occurred; Vaughn did not testify regarding this incident.

not talk to the employees personally, and he made the decision without having issued any warning to them. The Administrative Law Judge further found that following the breakdown in question Baumer promptly left the truck, in accordance with Respondent's undisputed policy, and attempted to "hitch" a ride into Knoxville for help. Thus, the Administrative Law Judge found that Burge and Baumer were delayed for reasons beyond their control and that Respondent seized upon this incident to rid itself of two union adherents. We do not agree.

At the outset we note that the Administrative Law Judge improperly relied upon Schafer's failure to testify in rejecting Respondent's asserted reason for discharging Burge and Baumer. In this regard, the record clearly shows that Schafer was no longer employed by Respondent at the time of the hearing herein; Schafer's availability being unknown, her failure to testify does not warrant the adverse inferences drawn by the Administrative Law Judge.[6] Similarly, inasmuch as the record shows that Hartman consistently made disciplinary decisions based solely upon reports from the various terminal managers, his failure to talk to or warn the employees personally is of no significance.

Furthermore, the record clearly shows that Burge and Baumer engaged in this misconduct for which Respondent asserts they were discharged. In this regard, Baumer unequivocally testified that, following their breakdown near Knoxville, neither he nor Burge left the truck to seek assistance for over 3 hours; both Burge and Baumer testified that they were aware of Respondent's policy that following a breakdown one of the drivers must leave the truck to seek assistance. Under these circumstances, and in view of the fact that "on-time service" was one of the four areas upon which Hartman focused when he took over in February, we find that Respondent would have discharged Burge and Baumer for their apathetic efforts to obtain assistance following their breakdown near Knoxville even absent their support for the Union. Accordingly, we shall dismiss this aspect of the consolidated complaint.

2. The discharge of Lloyd Tucker

On 28 June 1980 Tucker had an accident during a rainstorm on the Greensboro-Cincinnati run while driving through a road construction area; while passing another car, Tucker struck a temporary road sign which had blown into his lane. Upon his arrival at the Cincinnati terminal, Tucker filed an accident report and explained the circumstances of his accident to then Terminal Manager Schafer, who placed him on "temporary non-driving" pending an investigation. On 13 July, Tucker was discharged allegedly because the circumstances of his accident indicated that he was not driving with due care for the road conditions.

In finding Tucker's discharge to be unlawful, the Administrative Law Judge relied upon his findings that this was Tucker's first accident, that the damage was minor, and that Respondent had not discharged other employees who had been involved in far more serious accidents; additionally, the Administrative Law Judge drew adverse inferences from Schafer's failure to testify in this matter and from "terminal manager" Ronald Vaughn's failure to talk with Tucker about the circumstances of the accident prior to his discharge. Accordingly, the Administrative Law Judge found that Tucker's discharge was motivated solely by his union activity. We do not agree.

For the reasons set forth above, Schafer's failure to testify does not support the adverse inferences drawn by the Administrative Law Judge. Furthermore, inasmuch as the undisputed evidence shows that Vaughn did not become terminal manager until 2-1/2 months *after* Tucker was discharged, his failure to talk with Tucker before his discharge is not significant. The record further shows that the damage caused by Tucker's accident was not minor, but rather, in addition to the damage found by the Administrative Law Judge, there was damage to the left front fender, left front bumper, and the left front upper cab portion of the truck. Moreover, with regard to Respondent's failure to discharge other employees who had been involved in more serious accidents, the record discloses only one such incident and that occurred well before Hartman took over in February. Finally, the record shows that, during the period prior to Tucker's discharge, Respondent discharged at least four other drivers for accidents. In view of the foregoing, we find that Respondent would have discharged Tucker for his 28 June accident even absent his support for the Union. Accordingly, we shall dismiss this aspect of the consolidated complaint.

3. The discharge of Jeffrey Snodgrass

In September 1980, Snodgrass applied for and was promoted to the position of driving instructor. Thereafter, during the course of contract negotiations in October, the position of driving instructor was excluded from the bargaining unit as being

[6] Conversely, there is no basis for inferring that Schafer was not equally available to both Respondent and the General Counsel. Accordingly, no adverse inference can be drawn against Respondent with respect to its failure to call Schafer to corroborate Hartman's testimony. *Wayne Construction*, 259 NLRB 571 (1981).

part of management. On 3 November then Terminal Manager Ronald Vaughn issued a written reprimand to Snodgrass for an unacceptably low fuel mileage average. On 10 November Vaughn called Snodgrass into his office and told him that the Dallas office had received a report indicating that he had been clocked at 63 mph by an insurance spotter. Following a discussion, Vaughn suspended Snodgrass pending receipt of the insurance report from Dallas. On 17 November Snodgrass was discharged allegedly for speeding and for low fuel mileage.

In finding Snodgrass' discharge to be unlawful, the Administrative Law Judge again drew an adverse inference from Schafer's failure to testify and found that Respondent devised an elaborate plan whereby it would promote Snodgrass to the position of driving instructor, which it considered to be part of management, so that it could thereafter discharge him at will. The Administrative Law Judge further found that Snodgrass' fuel mileage average was "better than the truck was recorded capable of doing," and that, at the time he was clocked at 63 mph, he was driving a truck with an inoperative speedometer and, thus, he did not know how fast he was going. Accordingly, the Administrative Law Judge found that Respondent seized upon the speeding and fuel mileage incidents as a pretext to conceal its unlawful motives. We do not agree.

For the reasons set forth above, Schafer's failure to testify does not support the adverse inferences drawn by the Administrative Law Judge to find that Respondent maintained a secret "plan" to promote Snodgrass into management. Indeed, the existence of such a "plan" is refuted by the fact Snodgrass voluntarily applied for the position of driving instructor. With regard to Snodgrass' fuel mileage average, the record clearly establishes that his average was among the lowest of all of Respondent's employees; this fact is of particular significance since, as the driving instructor, one of Snodgrass' functions was to instruct all employees on proper fuel conservation techniques. Finally, contrary to the Administrative Law Judge's finding, the record contains documentary evidence indicating that, at the time he was clocked at 63 mph, Snodgrass was driving a truck with a *working* speedometer and that he had exceeded 60 mph for a substantial portion of his trip. Accordingly, in view of the emphasis that Respondent had placed on fuel mileage and obeying the 55-mph speed limit since Hartman took over in February, we find that Respondent would have discharged Snodgrass for speeding and for low fuel mileage even absent his support of the Union.

4. The discharge of Michael Green

In August 1980, Green was hired by Respondent as a serviceman. Thereafter, he served on the Union's negotiating committee and, in late October, he was elected union steward. As set forth above, in late October and early November Respondent threatened to discharge Green both for accepting the position of union steward and for performing the duties of union steward. On 7 November Green was suspended for 7 days allegedly for sending out a truck without servicing it. Following his suspension Green worked for 2 days and then was off sick. While on sick leave, Green received a phone call from a fellow employee who asked why he had been fired; Green responded that he did not know. Thereafter, Green called then Manager Vaughn and asked whether he had been fired; Vaughn told him that he had not been fired. When Green went to work the following day, Vaughn told him that he was being terminated for "10 reasons"; Vaughn did not tell Green what the "10 reasons" were. Green immediately filed a grievance with the Union. Thereafter, Respondent told Green that he was discharged for failure to put oil in a truck. In settlement of the grievance, Respondent ultimately agreed to hire Green back as a probationary truckdriver with the understanding that he could not be union steward.

In finding Green's discharge to be unlawfully motivated, the Administrative Law Judge relied upon his findings that Respondent had threatened to discharge Green both for accepting the position of union steward and for performing the duties of union steward. Furthermore, the Administrative Law Judge found that, since Respondent failed to give Green a reason for his discharge at the time of his separation, its late assertion that he was discharged for failing to put oil in a truck was an afterthought and a pretext.

In its brief, Respondent argues that the Administrative Law Judge erred in discrediting Vaughn's testimony that he told Green that he was being discharged for failing to put oil in a truck. In this regard, Respondent argues that it has established that it would have discharged Green even absent his actions as union steward. We find no merit in this argument. Assuming *arguendo* that Vaughn told Green that he was being discharged for failing to put oil in a truck, the fact remains that, when Respondent agreed to rehire Green, it was with the understanding that he could not be union steward. Such a condition clearly establishes Respondent's true reason for its discharge of Green—his actions as union steward. Accordingly, we adopt the Administrative Law Judge's finding that Respondent

violated Section 8(a)(3) and (1) of the Act by discharging Michael Green.

5. The discharge of Phillip Seitz

On 5 December 1980, Seitz fell and injured his back while at work. Thereafter, Seitz saw a doctor who advised him that he might be able to return to work on a limited basis in January 1981, but that he could not return to work full time until at least 6 April 1981. Seitz conveyed this information to Respondent and was told not to return until he could run a full schedule; Respondent also requested that Seitz give it 2 weeks' notice of his ability to return. Thereafter, Seitz completed Respondent's accident report form and filed for workmen's compensation.

On 12 May 1981, Seitz went to Respondent's terminal to deliver a notice for the Union which stated: "Those wishing to run for Steward sign here"; Seitz had signed his name on the list. On 16 May 1981 Seitz received an envelope containing three letters by certified mail; two of the letters were dated 14 May and one was dated 15 April. In essence, these letters stated that, since Seitz did not return to work on 8 April, Respondent considered him to have resigned on 15 April. Immediately upon receipt of these letters, Seitz called Respondent and spoke with Vaughn, who indicated that Respondent would adhere to its position that he had resigned and that it was contesting his workmen's compensation claim.

On 22 May Seitz went to Respondent's terminal to talk with Vaughn. At that time Seitz showed Vaughn a copy of a supplemental report signed by his doctor indicating his continued disability. Although Seitz requested that his name be returned to the bulletin board as an employee, Vaughn maintained his position that Seitz was no longer an employee.

In finding that Respondent unlawfully discharged Seitz, the Administrative Law Judge noted that Respondent did not have any reasonable information upon which to conclude that Seitz had resigned or obtained work elsewhere. The Administrative Law Judge compared the date Respondent mailed Seitz the package of three letters, 14 May, with the date that Seitz posted his name as a candidate for union steward, 12 May, and, in light of Respondent's established union animus, he inferred that Seitz' candidacy for union steward provoked Respondent to terminate his employment. We agree. In this regard, we note that, in its letters to Seitz, Respondent purports to rely upon information obtained from the Bureau of Workmen's Compensation to support its conclusion that Seitz had been authorized by his doctor to return to work;[7] however, the record clearly shows that the dates listed in Seitz' workmen's compensation file were merely estimated release dates. Indeed, if Respondent's action in terminating Seitz was taken on the good-faith belief that Seitz had recovered, we see no justification for Respondent's refusal to rescind its action upon Seitz presentation of a copy of his doctor's supplemental report indicating his continued disability. Accordingly, we adopt the Administrative Law Judge's finding that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Phillip Seitz.

In accord with our findings above and upon consideration of the entire record, we make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Truck Drivers, Chauffeurs and Helpers Local Union No. 100, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct, Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act:

(a) Interrogating its employees about their union interest or sympathies.

(b) Giving its employees the impression that their union activities were under surveillance.

(c) Threatening to close its facility if its employees selected union representation.

(d) Threatening an employee with bodily harm for telephoning employees about union activities.

(e) Asking an employee to drop charges he had filed with the Board.

(f) Telling an employee not to file for unemployment compensation and implying that he should withdraw such claim.

(g) Threatening to discharge an employee for accepting the position of union steward.

(h) Threatening to discharge an employee for performing the duties of union steward.

4. By discharging employees Michael Green and Phillip Seitz because they engaged in protected concerted or union activities, Respondent has en-

[7] In its brief, Respondent argues that it considers Seitz to have voluntarily quit his job because of his failure to follow the terms of its contract with the Union requiring employees on a medical leave of absence to provide a physician's statement regarding the continuance of their disability. We find no merit in this argument. Inasmuch as Respondent did not rely upon this contract provision at the time it terminated Seitz, it cannot raise it now. Indeed, this argument clearly is a pretextual afterthought.

gaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

5. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent did not engage in any unfair labor practices other that those found herein.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order Respondent to offer Michael Green and Phillip Seitz immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights previously enjoyed, and to make them whole for any loss of pay suffered by them by reason of its discrimination against them. Such backpay is to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).[8] Furthermore, we shall order Respondent to expunge from its records and files any references to its unlawful discipline of Michael Green and Phillip Seitz, and notify them in writing that this has been done and that evidence of this unlawful discipline will not be used as a basis for future personnel action against them. *Sterling Sugars*, 261 NLRB 472 (1982).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Norbar, Inc., Sharonville, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees about their union interest or sympathies.

(b) Giving its employees the impression that their union activities are under surveillance.

(c) Threatening to close its facility if its employees select union representation.

(d) Threatening its employees with bodily harm for telephoning employees about union activities.

(e) Asking its employees to drop charges filed with the Board.

(f) Telling its employees not to file for unemployment compensation and implying that they should withdraw such claims.

(g) Threatening to discharge its employees for accepting the position of union steward.

(h) Threatening to discharge its employees for performing the duties of union steward.

(i) Discharging its employees because they engaged in protected concerted or union activities.

(j) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Michael Green and Phillip Seitz immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights previously enjoyed, and make them whole for any loss of pay suffered by them by reason of its discrimination against them, with interest, in the manner set forth above in the section entitled "The Remedy."

(b) Expunge from its records and files any references to its unlawful discipline of Michael Green and Phillip Seitz, and notify them in writing that this has been done and that evidence of this unlawful discipline will not be used as a basis for future personnel action against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at Respondent's plant and place of business located in Sharonville, Ohio, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[8] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

MEMBER HUNTER, dissenting:

Contrary to my colleagues, I would grant Respondent's motion to remand this proceeding to another adminstrative law judge for the purpose of receiving the record *de nova* and the preparation of a new and complete written decision. The majority concedes that the Administrative Law Judge has made numerous substantive errors as to the record in this case, which prevent the majority from adopting a substantial number if not a majority of the Administrative Law Judge's credibility resolutions and other findings on the record. Accordingly, I find the situation in this case so aggravated that it is unwise to rely on any part of the Decision here and I would remand it to another administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interrogate our employees about their union interest or sympathies.

WE WILL NOT give our employees the impression that their union activities are under surveillance.

WE WILL NOT threaten to close our facility if our employees select union representation.

WE WILL NOT threaten our employees with bodily harm for telephoning employees about union activities.

WE WILL NOT ask our employees to drop charges filed with the Board.

WE WILL NOT tell our employees not to file for unemployment compensation and imply that they should withdraw such claims.

WE WILL NOT threaten to discharge our employees for accepting the position of union steward.

WE WILL NOT threaten to discharge our employees for performing the duties of union steward.

WE WILL NOT discharge our employees because they engage in protected concerted or union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Michael Green and Phillip Seitz immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights previously enjoyed, and WE WILL make them whole for any loss of pay suffered by them by reason of our discrimination against them, with interest.

WE WILL expunge from our records and files any references to our unlawful discipline of Michael Green and Phillip Seitz, and WE WILL notify them in writing that this has been done and that evidence of this unlawful discipline will not be used as a basis for future personnel action against them.

NORBAR, INC.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge: Upon unfair labor practice charges filed in Cases 9-CA-15518, 9-CA-15587, 9-CA-15737, 9-CA-16716, and 9-CA-16875 on various dates between June 30, 1980, and May 22, 1981, by Charlie Burge, Lloyd Tucker, Robert Crutchfield, Jeffrey Snodgrass, and Phillip K. Seitz, respectively, herein referred to by their individual names, against Norbar, Inc., herein called Respondent, the Regional Director for Region 9, on behalf of the General Counsel, issued complaints on October 3 and 8, 1980, and on May 26, 1981. The motion of counsel for the General Counsel to reopen the record and consolidate Cases 9-CA-15737, 9-CA-16716, and 9-CA-16875 with the initially filed cases was granted by the Administrative Law Judge on May 29 and July 2, 1981, respectively.

The complaints in substance allege that Respondent threatened and interrogated its employees on several occasions in violation of Section 8(a)(1) of the Act, and that Respondent unlawfully suspended employees and subsequently unlawfully discharged them because of their sympathy for, activities on behalf of, and membership in the Union in violation of Section 8(a)(3) of the Act.

Respondent filed answers on October 3 and 8, 1980, on March 11, 1981, and at subsequent times thereto denying that it has engaged in any unfair labor practices as alleged in the complaints.

A hearing in the above matter was held before me in Cincinnati, Ohio, on April 15 and 16 and July 22 and 23, 1981. Briefs have been received from counsel for the General Counsel and counsel for Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent Norbar, Inc., is, and has been at all times material herein, a Texas corporation engaged in hauling bulk mail for the United States Postal Service with a depot at Sharonville, Ohio, the only facility involved in this proceeding. During the last 12 months, a representative period, Respondent, in the course and conduct of its business operations, performed services valued in excess of $50,000 in States other than the State of Texas.

The complaint alleges, the answer admits, and I find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Truck Drivers, Chauffeurs and Helpers Local Union 100, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.[1]

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

Respondent is engaged in the business of hauling bulk mail for the United States Postal Service. It has a depot in Sharonville, Ohio, the facility involved in this dispute. In order to carry out its business, Respondent must bid for and successfully receive a contract with the United States Postal Service. The contract requires Respondent to make delivery of the bulk mail within a specified number of hours or the Postal Service would issue what is called a "5500-Contract Route Irregularity," stating the driver's name and the time of the late arrival. The more 5500's received by Respondent from the Postal Service tend to jeopardize its receipt and retention of the contract. Hence, prompt delivery is essential for Respondent to live up to its obligation under the contract.

In its answer, Respondent admits that Lloyd Harmon, general manager, and Ronald Vaughn, terminal manager, are supervisors within the meaning of the Act. Respondent further admits that Scott Wright, Gary Hardin, Jack Flora, and Carol Schafer were, at certain periods of their employment by Respondent, supervisors within the meaning of the Act, but are no longer employed by Respondent.

B. *Organizing Activities of Employees and Respondent's Reaction Thereto*

A composite of the undisputed and therefore credited testimony of Charlie Burge, Lloyd Tucker, Howard Baumer, Robert Crutchfield, Jeffrey Snodgrass, and Phillip Seitz established that during the months of February, March, and April 1980 they and other employees congregated on the Company's parking lot or in the driver's lounge and discussed faulty or defective equipment, how to receive the correct amount of pay or other benefits, and the advantages of being represented by a union. They attended several union meetings and at least Burge, Tucker, Baumer, Snodgrass, and Seitz signed and/or solicited union authorization cards from fellow employees.

Charlie Burge further testified that around April 1980 he returned to work from vacation, and Jack Flora, assistant terminal manager, and Bill Lambert, the Dallas terminal manager, walked into the shop in an intoxicated state. Manager Flora shook his finger at him and called him a son-of-a-bitch, saying, "The next time you refuse a run, I can take you off it and let somebody else run it." The union election was scheduled for May 19 or 21, 1980. Around May 17, 1980, Burge said, he returned from a 3:30 run to Greensboro, North Carolina, and Manager Flora asked if he would come into the office. He went into the office and Flora asked him, in the presence of then secretary Carol Schafer, how he felt about the Union. Flora also asked him how did he like things around Norbar and this business about the Union. *Burge said he stated that he was 100 percent for the Union because if the drivers did not get a union they were going to be fired anyway.* Flora said, "Nonsense." Burge said, "The way the management is here, you would rather fire people than deal with them." As he was leaving the office he saw Howard Baumer and told Baumer Flora was calling people into the office to get their opinions of the Union.

Burge filed charges with the National Labor Relations Board about the conversation which took place with Flora on May 17. Both he and Baumer voted in the union election on May 21, 1980. Immediately thereafter, on May 21, he withdrew the charges filed with the Board because the Union had won the election and he saw no need to pursue the matter further.[2]

Truckdriver *Howard Baumer* testified that just a couple of days before the union election on May 19 and 21, 1980, the following occurred:

> A. . . . I reported for work and Charlie Burge, my partner, he was already in the truck asleep. I stowed my gear in the truck and I said, "Hi, Charlie, how are you doing?" to try to wake him up when I climbed up in the cab.
>
> Mr. Hardin—I started to climb down and Mr. Hardin comes up to me and says, *"Baumer, are you using my name for union business?" Before I could say anything he says, "If you are using my name, I'm going to punch you in the nose."* Again I tried to tell

[1] The facts set forth above are undisputed and are not in conflict in the record.

[2] I credit Charlie Burge's testimony that a couple of days before the union election Manager Jack Flora called him into the office and asked him how he felt about the Union. I credit Burge's account because not only was I persuaded by his demeanor that he was telling the truth, but Jack Flora did not appear and testify and Respondent could not deny the occurrence or substance of the conversation. Moreover, I was further persuaded by the fact that Burge's account is consistent with other testimony herein of Flora's antiunion interrogation of other employees about their union interests.

him I wasn't using his name—our names sound similar.

Q. What?

A. Our names sound similar. My Howard and his Hardin on the phone sound similar to the employees. . . .

Q. Calling your attention, then, to a couple of days later, did you have any further conversations with Mr. Hardin?

A. Yes. I reported for work and I asked him, "Gary, are you mad or am I going to get fired over this, or are you still angry about it or what?"

He said, "*No, I'm not mad about it. I don't care about the union one way or the other.*" I apologize for hollering at you the other night."

Baumer's testimony in this regard was corroborated by his codriver, Charlie Burge, who said that after the above conversation he came out of the truck so that Shop Manager Hardin would know that he overheard the conversation with Baumer. Hardin did not appear and testify in this proceeding and Respondent did not deny the occurrence or the substance of the conversation. Consequently, I credit Baumer's corroborated account of the conversation. Thereupon, Baumer testified, he filed a charge with the National Labor Relations Board. However, after the election, he said, he went to the office of Shop Manager Hardin, who said, "*I heard that you dropped charges against me. If you have, fine. If you haven't, I wish you would because Mr. Hartman [president of Respondent] is upset about all the charges against me; but he is particularly upset about the one that you have against him*" (sic).

Respondent's president, David Hartman, testified that he threatened to discharge Hardin about his threats to Baumer and directed Hardin to apologize. Baumer did not withdraw the charges filed with the Board.

Truckdriver Lloyd Tucker testified that about 1-1/2 to 2 weeks before the union election on May 19 or 21, 1980, Manager Jack Flora called him into the office, and, in the presence of Carol Schafer, then Flora's secretary, asked him how he felt about the Union. He did not answer. *Flora then said that he (Flora) knew who some of the leading organizers were and had their names.* Flora continued to question him and stated, "if you got union representation and if the company did not want to negotiate with the Union—"; he (Tucker) interrupted Flora and said, "Well, the company would probably have to break down and negotiate." Flora said, "The company could just load up the tractor and the trailers on a train and ship them back to Dallas and the truckdrivers would be out of work." Tucker said Flora was angry and stated that the next time he caught him (Tucker) doing a speed of 60 miles an hour he would come personally from Dallas, Texas, and terminate his employment.[3]

[3] I credit Tucker's testimony not only because I was persuaded by his demeanor that he was testifying truthfully, but also because it was not denied by Respondent and it is consistent with other credited testimony of Flora's antiunion interrogation of employees.

Discussion

Based upon the foregoing credited testimonial evidence of record, I conclude and find that Respondent stipulated that Jack Flora and Gary Hardin were at times supervisors within the meaning of the Act, and I further find that at all times pertinent to the findings herein they were in fact supervisors within the meaning of the Act; that on or about May 18, or 1 or 2 days before the union election, Respondent (Manager Jack Flora) called truckdriver-employees Chalie Burge and Lloyd Tucker into his office and interrogated them about their feelings or, or interest in, the Union; that such interrogation was of a coercive and restraining nature because it was carried out by a high-ranking managerial official of Respondent, the terminal manager, without giving said employees any assurance against reprisal by management for expression or not expressing such an interest; that Charlie Burge told Manager Flora he was 100 percent for the Union, and, as a result thereof, Respondent had actual knowledge of his prounion interest and participation; that on or about May 19, 1980, Respondent (Shop Foreman Gary Hardin) threatened to do bodily harm to truckdriver Howard Baumer for telephoning other employees about union business; that a few days after the union election on May 19 and 21 (about June 4) Manager Hardin asked Howard Baumer to drop charges Baumer had filed with the Board against Hardin and Respondent's president, David Hartman; that about a week or two before the union election Manager Flora gave employees the impression their union activities were under surveillance by Respondent by telling Tucker he knew who some of the leading organizers were and had their names, and implied that Respondent would not negotiate with the Union, but would probably abolish the business and the employees' jobs; and that each and all of said interrogations, threats, impressions, and implications by Respondent constituted union animus and/or had a coercive and restraining effect upon the exercise of employees' protected Section 7 rights in violation of Section 8(a)(1) of the Act.

C. *Respondent's Discharge of Charlie Burge and Howard Baumer*

Burge also testified that on or about June 26 he made a run through Corbin towards Knoxville, Tennessee, and upon his return he and his codriver, Baumer, were assigned another run to Greensboro, North Carolina. They left about 2 a.m. in the morning on June 27 and, after driving about 21 miles in Kentucky, they pulled into a truckstop and turned off the motor as they were directed to do in the interest of conserving fuel. When they returned from the coffeebreak the truck failed to start and he called the Cincinnati terminal and spoke to Ed, the serviceman on duty. He advised Ed that the truck failed to start and Ed said, "Oh, Oh, Yeah. I forgot to tell you, that truck has a bad starter in it. You are not suppose to shut it down." Burge said he said, "Thanks a lot. I didn't know that." Ed then advised them to see if someone could give them a jump. They got a jump and got the truck started, but there was oil leaking from somewhere under the engine.

Burge placed another call to Ed in Cincinnati, advised him of the leaking oil or fluid, and told him he thought they would have to go into a garage and have a mechanic look at it. Ed said, "Okay, but don't let them touch anything, call me back and let me know what's going on." Burge said he did just that at 76 Truckstop. Then he called Ed and they got authorization to have the truck repaired. After the truck was repaired they proceeded on their destination, but after driving about 15 miles east of Knoxville, Tennessee, the truck started to overheat and broke down again. He and Baumer pulled over to the side of the road and Baumer left the truck to try to secure a ride into Knoxville for assistance. Respondent's trucks are not provided with CB radios so they got a local truck to flag down another truck which had a CB radio and Burge was able to talk to a woman on the CB radio who promised that she would telephone Knoxville to a Mag dealership with whom Respondent did business.

Baumer went to the westbound side of Highway 40 to try to hitch a ride into Knoxville or to a telephone to call for assistance. He was not successful in getting a ride probably because most truckdrivers would not know that he was a truckdriver and were reluctant to pick him up. About 2 hours later, Baumer did get a ride, and after he left one of their fellow drivers, Jene Gaskins, who was driving on the westbound side of the highway, recognized them, suspected they were having trouble, and came over to them. Burge said he told her the truck had overheated and Baumer had gone into Knoxville to try to secure assistance. Gaskins said she would go into Knoxville and call the Mag dealership and would also place a call to Terminal Manager Carol Schafer in Cincinnati.

About 2 hours later, a wrecker came and towed them to Knoxville Truck Sales at or about the time they were closing. The cab of the tractor was jacked up and Baumer and Burge had nowhere to sleep. Burge called the Cincinnati terminal to ask if they could check in a motel to get some sleep and the office said, "No," they should stay with the truck which was transporting mail. They remained with the truck for 4 or 5 hours before it was ready. Respondent wired money for the repairs and did not wire enough, so they had to wait another hour until Respondent wired the additional money. Baumer denied that he told Manager Jack Flora if he (Flora) did not get someone there in 10 minutes he was going to take a plane out of there.

After the truck was repaired, *Howard Baumer* testified, the remainder of their trip was as follows:

> As soon as we got the money straightened out, we took off. We had both been up all night, so we went to the first rest area and we pulled over and we both went to sleep, which isn't a common practice. It's supposed to be one guy sleeps while the other guy drives.
>
> Carol says, "Why are you both sleeping?" "Why weren't you going on to Greensboro."
>
> I said, "Well, we've both been up all night and neither one of us was fit to drive. So we pulled off and slept a couple of hours and logged it in our log book as such. That's why when we took off, we got into Greensboro late."
>
> It's usually a six-hour drive from Knoxville to Greensboro; but it took a little extra because we both slept for a couple of hours rather than driving.
>
> She said, "Why were you so late getting in there?"
>
> I said, "Well, we was both sleeping. The truck wasn't moving at all for a while."
>
> She says, "What else happened?"
>
> I says, "Well, we came on back home—of the truck and went home." The serviceman—I'm not sure who it was. I think it was Crutchfield, but I'm not real sure. He said that Carol wanted to talk to us first thing in the morning. That's how I knew to come back. My phone wasn't operating at that time.

Baumer testified when they arrived in Cincinnati the serviceman told them Manager Schafer wanted to see them in the morning.

Charlie Burge further testified that Terminal Manager Carol Schafer called him at home and requested him to come into the office, which he did. When they arrived at the office, both Burge and Baumer testified, they were given termination papers, respectively, by Terminal Manager Carol Schafer. Baumer testified that Schafer told him he was fired for waiting too long to get help and threatening to leave the truck. He said he denied that he threatened to leave the company truck and attempted to explain to her, to no avail, why they were delayed in getting assistance. Burge testified he was advised by Schafer that he was fired because he failed to attempt to call for assistance on his breakdown run on June 27 until after a lengthy period of time, he had a tractor repaired without authorization, and he did not have a logbook in his possession. He said the logbook incident occurred earlier, on June 11, 1980, for which he was suspended for 8 hours. Although he explained the events and circumstances of the breakdown run and the cause for their delay, Burge said he and Baumer were nevertheless given termination slips (G.C. Exh. 3) anyway.

Burge thereupon filed charges with the National Labor Relations Board on the following day (June 28 or 29).

David Hartman, president, chief executive, and owner of Respondent, testified that he made the decision to terminate Charlie Burge and Howard Baumer based on a telephone report from Terminal Manager Carol Schafer which stated that after their truck broke down Burge and Baumer were asleep in the truck and did not go for assistance for a long period of time. From the geographic description of the drivers' breakdown, the fact that they had no business stopping in Corbin, Kentucky, because they were supposed to drive for 5 hours before their first stop, and the fact that they were only 2 hours out of Cincinnati, he concluded that they were within walking distance for assistance. Thereupon, he directed Terminal Manager Schafer to fire them.[4]

[4] I do not credit President Hartman's stated reasons for his decision to discharge Burge and Baumer because his testimony in this regard was not

Continued

Discussion

It is clearly established by the foregoing credited evidence that a few days before the Union's successful election on May 21, 1980, driver Charlie Burge told Respondent's Terminal Manager, Flora, in the presence of codriver Howard Baumer, that he was 100 percent for the Union. Burge further argued with Flora for justification of unionization. Since Burge acknowledged his union involvement while Respondent (Flora) was coercively interrogating them (Burge and Baumer) about their union interest, Respondent had actual knowledge of Burge's involvement and in all probability knew or strongly suspected Baumer was also an organizer for, supporter of, or sympathizer for the Union.

Moreover, Flora's statements about the Union and the options Respondent had for rendering the Union ineffective as the employees bargaining agent manifested union animus which prevailed in the climate of the terminal prior and subsequent to the election, as will be further shown *infra.* Hence, when Burge and Baumer were several hours late on a run on June 27, 1980, due to mechanical malfunction of their tractor, Respondent seized on this irregular incident to serve as a basis to discharge Burge and Baumer on or about June 27.

However, when the timing of the discharges is considered in conjunction with the antiunion climate at the terminal, the Union's success in the election on May 21, the charges filed by Burge and Baumer against Respondent, as well as the 8(a)(1) conduct, subsequent threats, and ultimate wholesale discharge of union organizing employees (Lloyd Tucker, Jeffrey Snodgrass, Michael Green, and Phillip Seitz), all between June 27 and November 1980, it is reasonably inferred from the General Counsel's *prima facie* evidence that Respondent's discharge of Burge and Baumer was motivated by their organizing activity.

Additionally, although Respondent contends it was weeding out employees who did not comply with its policies, it failed to establish that Burge and Baumer voluntarily failed to comply with any company policy. Both drivers have shown that they were delayed on June 27 by reasons beyond their control and Respondent's contended reasons for their discharge were herein discredited. Thus, Respondent has also failed to establish that Burge and Baumer would have been discharged even if they were not involved in union activity. Consequently, Respondent's discharge of Burge and Baumer was discriminatory and in violation of Section 8(a)(3) and (1) of the Act.

D. *Company Policy Governing the Performance of Truckdrivers*

David Hartman, president and owner of Respondent, testified that he took over Norbar on February 1, 1980, and observed that some of the problems affecting progress of the Company were improper service of equipment, interior and exterior damage to equipment which was only 1-1/2 years old but appeared 5 years old, excessive speeding violations, and a high rate of accidents causing increased costs for insurance and Respondent's being insured on a month-to-month basis. At that time Jack Flora was manager of the Cincinnati terminal and he met with Flora and the managers of the Dallas (Bill Lambert) and the Kansas City (Lloyd Harmon) terminals and directed them to help eliminate these problems by enforcing company policy governing the preservation of equipment and the conservation of fuel and operating costs. Subsequently, he (Hartman) distributed a memorandum (Resp. Exh. 7) to all managerial and driver personnel outlining the rules to safeguard the above objectives. He also posted a copy of changes in policy (Resp. Exhs. 6 and 10) dated September 8, 1980, on the bulletin board.

In March 1980, Hartman met with the drivers and apprised them of the financial status of the Company and his newly issued priority rules (Resp. Exh. 7) for drivers to comply with in meeting company objectives. He said he told the drivers those who did not cooperate and comply with company policy would be terminated, as others were terminated, which terminations have caused quite a turnover in driver personnel. He emphasized driver compliance with the 55-mile-per-hour speed limit, and driver Lloyd Tucker said he drove at 60 miles per hour and that was the way he was going to drive.

Hartman continued to testify as follows:

> Finally I said, "Mr. Tucker, I'm not going to argue with you any further. I'm telling you right here and now this is my company, these are my trucks and you work for me. If you intend to work here you had better stop speeding for all time because you are going to be fired if you don't."

Although Hartman's testimony in this regard was corroborated by that of Manager Ronald Vaughn and Respondent's general manager, Lloyd Harmon, truckdriver Lloyd Tucker emphatically denied that he made the latter statement, but, instead, said he asked Hartman could a driver exceed the 55-mile-per-hour speed limit by a couple of miles to make up for loss time, or when descending a hill, in an effort to make the trip on schedule. He also testified that during the meeting with Harmon he inquired about the feasibility of the lack of seatbelts in the trucks as a safety matter and Harmon got angry and started moving closer to him while rolling up his sleeves. Harmon then started telling the employees they did not need a union and that the employees could communicate with him or with management.[5]

corroborated, because Carol Schafer, on whose telephonic report he contends he relied, did not appear and testify herein, because the decision was made without Hartman talking to the drivers personally about some of the assumptions he made about their delay, and because of the precipitous nature of his decision, not having issued any warning to the drivers in question.

[5] I credit Tucker's denial that he told management he would drive the way he wanted to, in the face of President Hartman's explicit directive about speed, because I was persuaded by the demeanor of Hartman, but particularly the demeanor of Harmon, that they were not testifying truthfully. I received the distinct impression from the substance and tone of their answers to questions that they were more interested in supporting management's position in this regard than telling the truth. Moreover, I am not persuaded as a matter of logic that the average employee would tell his employer (president of the company) in advance that he was not going to comply with such a directive. If such an employee did, manage-

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President Hartman also met with the drivers again about 1 week before the election and he testified that he told the employees about the objectives of the Company, and asked them to work with the Company to make it a sound business, which would have no relation to whether or not they had a union. He *denied* that he told the employees *he would not bargain* with the Union, *that he threatened employees* about their union activities, that he told employees he would not cooperate with the Union, or *that he told employees he knew any individual* employee was involved in any union organizational activity.[6]

Finally, President Hartman testified that he also met with management and told them that Respondent, as a company, did not prefer a union; that Respondent did not think a union was in the best interest of the Company or the employees; but that it was a right of the employees to decide. He said he told them no one was to be intimidated or discriminated against for their views on the Union and that all supervisors must be careful not to violate the labor laws. He acknowledged that, in the beginning of his takeover of the Company and the onset of this dispute, the Company did not have an attorney-at-law but the Company was being represented by its general manager, Lloyd Harmon, because the Company did not take the dispute seriously.[7]

Respondent's drivers' manual is said to contain the following:

> All drivers are required to maintain a minimi six-mile per gallon average. This is part of your terms of employment and will be enforced rigidly. If any driver cannot maintain 6 m.p.g., it is his responsibility to seek help from his driver instructor. [Resp. Exh. 10, p. 3.]
>
> All company vehicles are equipped with tachographs, the purpose of this is to monitor speed and engine RPM. Federal law and company policy require that no driver shall exceed the 55 m.p.h. speed limit under any circumstances. Any driver that abuses this policy is subject to immediate termination without warning. [Resp. Exh. 10, p. 23.]

Discussion

Although Respondent's manual might contain the above provisions, it was not unequivocally established that all truckdrivers, including Lloyd Tucker and Jeffrey Snodgrass, *infra*, actually received a copy or had a chance to read said manual. Since Respondent established that it simply posted changes in said manual on the bulletin board, it is not shown which changes or whether the above provisions were changes which were posted. Moreover, the credited evidence of record, *infra*, clearly infers that Respondent did not consistently and uniformly enforce said provisions or other policies regarding driver speed, number of accidents, or the 6 mpg average rule.

E. *Respondent's Discharge of Truckdriver Lloyd Tucker*

Lloyd E. Tucker testified that he signed a union authorization card, and attended several union meetings at the Union's local office with several other fellow employees; and that about a week and a half prior to the union election on May 19 and 21, 1980, Respondent's manager, Jack Flora, called him into the office, and, in the presence of then secretary Carol Schafer, asked him how he felt about the Union. When Tucker did not respond, Flora said *he (Flora) knew who some of the leading organizers were and he had their names.*

Tucker continued to testify about his conversation with Flora as follows:

> A. He was asking me questions about the union; and then he turned around and he stated, well—you know, "If you got union representation and if the company did not want to negotiate with the union," then I told him that—you know, I just sat there for a second, then I stated, "Well, the company would probably have to break down and negotiate."
>
> Then he said, "*Well, if the company did not want to negotiate with the union, that they could just load up the tractors and the trailers on a train and ship them back to Dallas and we would be out of work.*"
>
> Q. Did he make any other conversation with you about your working conditions there?
>
> A. Correct. He stated then—He was kind of angered, and he stated that the *next time he caught me doing a speed of 60 miles an hour, that he would come personally from Dallas, Texas, and terminate my employment.*

Discussion

Thus, based upon the above hereinbefore credited testimony, I conclude and find that it may be reasonably inferred from such evidence that, through its Manager Flora, Respondent knew or strongly suspected that Lloyd Tucker was one of the union organizers or supporters.

About 10:30 p.m. on *June 28, 1980*, while on his return from Greensboro, North Carolina, Tucker encountered a severe rainstorm when driving through a road construction area in Lexington, Kentucky. His truck was between a wall and a car which he passed and by which he was prevented from changing lanes. A temporary road sign fell over into his lane and he could not avoid hitting it. The truck struck the sign and damaged the rearview mirror on the driver's side of the tractor. Tucker obtained an estimated cost of damage as $15. When he ar-

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ment, in all probability, would ask for his resignation. Respondent certainly did not request a resignation. Meanwhile, I was persuaded by Tucker's rather candid and spontaneous responses to the questions that he was telling the truth, and Hartman and Harmon were not.

[6] While I credit President Hartman's affirmative testimony about what he said in meetings with the drivers, I was persuaded that his denials of essentially corroborated testimony of the employees herein was not truthful. Not only was the testimony of the employee-witnesses partially corroborated by one another, but their versions were consistent with other corroborated evidence of the consistent antiunion climate which prevailed at the Cincinnati terminal.

[7] Although I credit the above testimony in part, it was not established how early Hartman so instructed management personnel. Hence, if he in fact so instructed them at all, I am persuaded by the evidence of record that it was late in the day of the organizing campaign. This conclusion is even more persuasive when it is observed that Respondent acknowledged that it did not have legal counsel in the bargaining, but was represented by its general manager, Harmon.

rived at the Cincinnati terminal he filed an accident report (G.C. Exh. 4) and explained to Terminal Manager Schafer the circumstances which gave rise to the accident. Schafer placed him on temporary nondriving status and told him she would have an answer for him the next day. This account of what happened is not disputed by Respondent and Carol Schafer did not appear and testify herein. No explanation was given for her nonappearance even though she is still in Respondent's employ.

Tucker called Schafer on or about the first of July and inquired about his driving status. Schafer informed him that she had not heard from appropriate managerial officials and that she would have to get back to him. Tucker called Schafer on or about July 11 or 12, and was advised by her that his employment with Respondent had been terminated. He said he was not shown any pretrip service reports (Resp. Exh. 3 or 4) at the time of termination. Respondent's president, David Hartman, testified that he made the decision to terminate Lloyd Tucker based on the investigative report which was submitted to him by Manager Carol Schafer and/or Ronald Vaughn, which indicated that Tucker was not driving at a safe speed and with due care for the road circumstances.[8]

Tucker further testified that he used to complete the accident or damage report (Resp. Exh. 11) until he noted repairs would not be made for months and he got tired of writing down the same dents and bumps, etc., and stopped completing it. He acknowledged it was company policy for drivers to complete forms before and after trips, but said some drivers would and some would not do so. He further acknowledged that he did see and learn company policy which was posted on the bulletin board and that he did attend meetings where such policies were discussed.

Tucker denied the left front bumper and left front fender were bent in when he returned the tractor, except that the fender may have had tiny "pings" or scratches which were there before he took the truck out.

Tucker also testified without dispute that driver Ed Walker had an accident in which he was at fault in 1979. Thereafter Walker had two additional accidents before he was discharged by Respondent. Also, while he was with codriver Terry Cutting, she had a serious accident causing $30,000–$40,000 in damages as a result of hitting debris and another car. Cutting was sent on a run with him 2 hours later when she fell asleep at the wheel and had another accident which totally destroyed a tractor-trailer. She was not discharged for either accident.

Tucker said this was his first and only accident, and Respondent did not deny any of his testimony in this regard. Moreover, Manager Ronald Vaughn testified that normally, after a driver's accident, he would talk to the driver. However, he acknowledged he did not talk with Tucker after his accident which is the subject of this dispute.[9]

Discussion

It is therefore reasonably inferred from the foregoing credited evidence of Terminal Manager Flora's statement to Tucker that he knew and had names of the leading union organizers, as well as from Tucker's enthusiastic jumping and clapping after the Union won the election, that Respondent knew or strongly suspected Tucker was a union organizer and supporter. Tucker's union animus prior and subsequent to the election on May 21 is clearly manifested throughout the record herein. So intense was Flora's animus that during his discussion of the Union with Tucker just prior to the election he threatened to come to Cincinnati from Dallas and personally discharge Tucker the next time he caught him driving at a speed of 60 miles an hour.

When Tucker had what the record indicates was his first and only minor ($15 damage) accident on June 28, 1980 (about 5 weeks after the Union won the election), Respondent immediately suspended him and ultimately discharged him on or about July 11 or 12, 1980. During the interim of his suspension and discharge, Tucker contacted Terminal Manager Carol Schafer to inquire about his employment status. Schafer's union animus was demonstrated when she replied the Union only wanted his (Tucker's) money and would not support him, and the Company was going to make things hard on all employees associated with the Union because "the company was not going to be pushed by the Union and was going to push back."

Although Terminal Manager Ronald Vaughn testified he normally talked with a driver involved in an accident before imposing any discipline, Respondent (Vaughn) acknowledged he did not talk with Tucker before his discharge. Nor does the record show that any other management official talked with Tucker before discharging him. In fact, President David Hartman said he discharged Tucker based on the investigative report submitted to him by Vaughn and/or Schafer. The latter's union animus has already been demonstrated herein. However, in any event, it is particularly noted that Schafer, with whom Tucker spoke and to whom he explained he was not at fault for the accident, did not appear and testify herein. Although she is still employed by Respondent, no explanation was offered for her nonappearance.

While President Hartman contended he discharged Tucker because he concluded based on the Company's investigative report that Tucker was not driving with due care for the road circumstances, he does not show how he reached that conclusion when he was not present at the time of the accident. No record was introduced to show at what speed Tucker was driving and no traffic accident report has been submitted by Respondent

[8] It is particularly noted that Lloyd Tucker's testimony is undisputed and is therefore credited. However, I do not credit President Hartman's contended reasons for discharging Tucker not only because I was not persuaded by his demeanor on the stand that he was testifying truthfully in this regard, but because his contended reasons for the discharge are essentially inconsistent with the credited circumstantial evidence of record as a whole.

[9] Again, it is particularly noted that Respondent did not emphatically deny or refute with any probative and comparative evidence Tucker's testimony regarding Respondent's failure to discharge some drivers for accidents for which they were believed or found at fault. Consequently, I credit Tucker's account in this regard because he also appeared positive and accurate about the examples which he cited.

to substantiate its conclusion. At least Tucker obtained a city accident report which concluded he was not at fault.

Thus, Hartman's contended conclusion for discharging Tucker is discredited. Additionally, the undisputed and unrefuted evidence of record shows that Respondent did not discharge some other employees who were at fault in accidents (some multiple) considerably more serious and costly than Tucker's accident. Consequently, it is further established that, if Respondent had a policy for disciplining drivers at fault in accidents, it was obviously not uniformly enforced, since Tucker was singled out for suspension and discharge.

Under the above uncontroverted circumstances, the General Counsel's evidence has amply established that Respondent's discharge of Tucker was solely motivated by his union activity, and not for an accident for which he was at fault. Since Respondent has not established any reason for Tucker's *suspension* and *discharge*, it is clear he was discriminatorily discharged for his union activity in violation of Section 8(a)(3) and (1) of the Act.

F. *Respondent's Discharge of Jeffrey Snodgrass*

Jeffrey Snodgrass undisputedly testified that he was employed by Norbar on September 2, 1978, and had worked for Respondent continuously until his termination. In or about May 1980, he solicited union authorization cards from fellow employees, including Terminal Manager Ron Vaughn, who declined to sign a card. During the same period, May 1980, while in the drivers' lounge completing his logs, Respondent's shop foreman, Gary Hardin, came in and stated he knew who "started this goddamn union" and he was going to get rid of them, and his name was Phil Seitz, and he was going to get rid of everyone of those "goddamn troublemakers."

Snodgrass further testified that on or about May 17, 1980, a conversation with Terminal Manager Jack Flora occurred as follows:

> A. I was in the drivers' lounge and Jack Flora motioned me into the office and Carol Schaeffer [sic], the secretary, was sitting there. He asked me did I think this union was going to do any good. And I said, "It couldn't hurt." And he said, "You know that if his union goes through that Harmon is gonna close the door and take his tractors back to Texas."

Snodgrass stated that at the time of the election nothing was said about driving instructors being in or not in the Union. All employees voted except office clericals, profesional employees, and supervisors. He (Snodgrass) was not a driving instructor at the time and he served as an observer for the Union at the election of May 19 and 21, while Manager Ron Vaughn served as an observer for the Company. During the election he challenged Vaughn's vote because he was directed to do so by the Union.

Subsequent to the election Snodgrass bidded on the driving instructor job and, he testified, *there was no conversation about whether or not driving instructors would be in the unit.* However, Respondent's vice president and general manager, Lloyd Harmon, testified that he participated in the negotiations of the new contract, during which the position of driving instructor was excluded for the unit because such driving instructor teaches drivers company policy, teaches drivers how to drive and how to conserve fuel mileage, decides whether they are trainable or nontrainable, and recommends that such trainees be hired or not hired. The Company accepts his recommendations.

Vice President Harmon further testified that, in response to a notice for interested employees to become driver instructors, Jeffrey Snodgrass was the only employee who applied and was hired as such by him. *He said that, during their interview in early September, Respondent's president, David Hartman, and Carol Schafer were present.* They discussed the duties of the position *and told Snodgrass the job was a management position and he would have to resign from the Union in order to accept it.* Snodgrass agreed to do that and he accepted. In further support of his testimony that Snodgrass had the authority to hire and fire, Harmon testified that Juan Flowers was terminated on Snodgrass' recommendation.[10]

Snodgrass further testified that he worked as a driving instructor for 2 months and that in November 1980 Ronald Vaughn was terminal manager. When he (Snodgrass) reported to work one day in November, Manager Vaughn informed him that he had received a call from Respondent's general manager, Harmon, in Texas, advising that he (Snodgrass) was caught by a postal inspector and then clocked by an insurance spotter exceeding the speed limit (63 miles per hour) down hill near Clover, North Carolina. Snodgrass said he said no one stopped him or even told him about speeding, and in fact his speedometer and tachometer were not working and he did not know how fast he was going. Manager Vaughn told him he should have known better because he had been driving long enough to know at what speed he was driving. Snodgrass said that, when he brought the particular truck, No. 52, back from Kansas City, he filed a report (C-2) that the speedometer did not work, and mechanic Mike Green wrote a worksheet on it but it could not be processed for the trial herein. He said that, when he took the truck out on another run, his speedometer had not been repaired.

In this regard, Respondent's general manager, Lloyd Harmon, further testified as follows:

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[10] Snodgrass' testimony is in sharp conflict with that of Respondent's vice president, Harmon, and its president, David Hartman, as to whether the driver instructor position was discussed as being, or not being, a management position during Snodgrass' interview for the position. I nevertheless credit Snodgrass' version and discredit Respondent's version because his version is supported by Manager Vaughn's former secretary, Deatra Hollars, who testified that former Terminal Manager Carol Schafer told her Respondent promoted Snodgrass to driving instructor so it could fire him for being one of the leaders of the drive which resulted in unionizing Respondent's employees. Although Hollars resigned from the Company in December 1980 because she was an intolerable witness to Respondent's unlawful conduct towards its employees, she nonetheless appeared and testified in this proceeding. Strangely, Carol Schafer, who, according to Vice President Harmon, was present during Snodgrass' interview for driving instructor, did not appear and corroborate or dispute Harmon's testimony, just as she did not appear and testify about other conversations in this proceeding to which she allegedly was a witness. Adverse inference is drawn from her absence, since no explanation was offered for her nonappearance.

> A. We had received an insurance observation report from our insurer stating that a specific truck was clocked by radar speeding. I called Mr. Vaughn and told him that I wanted to know who was driving that truck. He found out who was driving and called back and told me that Mr. Snodgrass was driving it. We had had complaints from several of the people that Mr. Snodgrass had instructed that he was instructing contradictory to the drivers' manual and the policies of the company. With all the information put together, plus the fact that his fuel mileage was below company standards and he was actually instructing at the time he was clocked speeding, the decision was made to terminate him.

Snodgrass testified that on November 17, 1980, Terminal Manager Ronald Vaughn gave him a copy of an observation report of his log, and said he had no other choice but to fire him. Snodgrass said he replied, "You've got to be kidding," Vaughn said, "No. I am not," and he (Snodgrass) explained to him again that his speedometer/tachometer were not operating and he did not know how fast he was going. His explanation was to no avail. Thereupon, Snodgrass said he went to the Union (business agent Odelle Hinkle) and filed a grievance. In February 1981, Hinkle (the Union) informed him that the Company said he (Snodgrass) was a part of management and his grievance would not be processed. Thereafter, he filed a charge with the National Labor Relations Board (NLRB). He also attended the NLRB trial of Charlie Burge and Howard Baumer and was present in the courtroom where he saw company officials present who presumably saw him.

The record shows that article 12 of the contract between Respondent and the Union provides that any driver caught exceeding the 55-mile-per-hour speed limit as established by tachometer, traffic violation, observation report, or clocking by management shall be subject to discharge without resource to the grievance procedure.

Harmon testified that, after his receipt of the observation report, he told Manager Vaughn that, considering all of the problems and the fact that Snodgrass was a driving instructor caught speeding, he could not tolerate that and would have to let him go.

Deatra Hollars, who is no longer in the employ of Respondent as secretary to Manager Vaughn, testified that, about a day or two after Jeffrey Snodgrass became driver instructor, Terminal Manager Carol Schafer told her "that that was one down." When she asked Schafer what she meant, Schafer said, "Jeff had been one of the leaders in bringing the Union into Norbar, and that by promoting him to driver instructor, that he would be excluded from the Union, and that his next step was out of the door."

With respect to Respondent's contention that Snodgrass was not teaching the driver trainees properly and was a poor example for them because he told them he would take them down Black Mountain in fifth gear, Snodgrass testified that, while he did kid with the trainees, he told Vaughn, "You know I would not do that," because if he did go down Black Mountain in fifth gear without breaking he would go 100 miles per hour. The speed limit is 35 miles per hour. In support of Snodgrass' contention that he was kidding, he testified that, while secretary to Ronald Vaughn, Deatra Hollars was in the office, he kiddingly stated that he would go down Black Mountain in fifth gear. Vaughn laughed and said, "You'd better not do it." Nothing further was said to him and no warning was issued to him by management.

Deatra Hollars, who is no longer in the employ of Respondent, corroborated Snodgrass' testimony to the effect that in mid-October he jokingly said something about taking new drivers down Black Mountain in fifth gear. She said both Snodgrass and Manager Vaughn laughed. Hollars also testified that, after Snodgrass left the office, Manager Vaughn repeated his remark about Black Mountain to General Manager Harmon on the telephone, not as a joke, but as having been seriously stated. When Vaughn got off the phone, Hollars said, *he told her Jeff Snodgrass had to go.* She said she asked him if he was finishing up what Carol Schafer had started and she repeated the conversation about one down and one more out of the door for being a union leader, and Vaughn said, "*You might say so.*"

Prior to his suspension and discharge in November, Snodgrass testified, he had received a reprimand (Resp. Exh. B) in October 1980 for excessive fuel mileage. In the presence of then secretary Deatra Hollars, he told Foreman Vaughn he was not going to sign the reprimand because he could prove he was getting better fuel mileage than what the truck actually did (according to the chart, the truck did 5.14 miles per gallon (mpg) and Snodgrass averaged 5.40 (mpg). Vaughn nevertheless gave Snodgrass the reprimand which itself showed 5.40 miles per gallon. Snodgrass further testified that the drivers were supposed to get 6.06 mpg and that vaughn told him when he gave him the reprimand that he was going to give every driver a reprimand who did not get 8 miles per gallon to teach them a lesson. However, he said he has never heard of any driver receiving a reprimand for not getting 8 miles per gallon.

Snodgrass said he has driven tractors with malfunctioning speedometers and tachometers many times, that such was not an unusual practice among drivers, and that he first saw a copy of the contract in January 1981, in which the driving instructor was excluded from the unit. He first learned the position was excluded in February 1981. Snodgrass also testified that he was the primary union organizer and that he was suspended on November 10, 1980, and terminated on November 17, 1980.

Thereafter, Snodgrass filed a charge with the National Labor Relations Board. He also attended the trial of Charlie Burge and Howard Baumer in this proceeding, and was in the courtroom where he saw company officials present who presumably saw him also.

Michael Green, service and maintenance worker, corroborated Snodgrass' testimony that on the day in question he checked out the speedometer and tachometer on Truck 52 and found that they were not operational. He attempted to repair them but the housing on the side of the motor where the speedometer cable hooks in was busted and, therefore, the cable could not be replaced.

Truck 52 was the truck Jeffrey Snodgrass and Phillip Seitz drove.

Discussion

In evaluating the credibility of Respondent with respect to Jeffrey Snodgrass' discharge, any fair evaluation thereof must, in context, take into consideration not only the limited circumstances of his discharge, but, in the broad context of the consolidated cases, the credibility and unlawful conduct of Respondent in whole as herein found. With this in mind, a careful review of the foregoing credited evidence readily reveals that Respondent's reasons for discharging Snodgrass are complicated by its unequivocal knowledge of his open union activity (observer for the Union at the election), as well as by adverse credited testimony that it contrived an ostensibly legitimate plan to promote Snodgrass out of the unit for the exclusive purpose of discharging him for his leadership role in organizing the Union.

While it appears well established that the driving instructor position was excluded from the unit during contract negotiations in late May or early June, I am persuaded by the evidence that Snodgrass did not know the position was so excluded at the time he accepted it and before his discharge. In fact, the credited evidence shows that Respondent wanted Snodgrass to accept the position. Thus, it is unlikely that it would have told him (a leading organizer and observer) that he would have to resign from the Union, and risk his declining to accept the position for that reason. I therefore find that Respondent did not apprise Snodgrass of the fact that the position was excluded from the unit and the latter did not know that it was excluded, and that Respondent selected him for the position (which it considered supervisory) for the exclusive purpose of thereafter discharging him. *Daniel Construction Co.*, 244 NLRB 704 (1979), and *Hospitality Motor Inn*, 249 NLRB 1036 (1980).

Additionally, it was established that the driving instructor teaches prospective truckdrivers how to drive the equipment, teaches them company policy, teaches them how to conserve fuel mileage, and decides whether or not a trainee is trainable or eligible for employment. However, the evidence failed to show that the driving instructor had authority, or in fact exercised authority, to recommend that a person be hired or terminated, or that he exercised any of the other indicia of supervisory authority. Under these circumstances, I find that Respondent failed to establish that the driving instructor position, *per se*, was a supervisory position within the meaning of the Act.

Respondent contends it discharged Snodgrass for exceeding the 55-mph limit by 8 miles in November 1980, pursuant to an insurance observation report, for complaints from persons Snodgrass trained that Snodgrass drove them or told them he drives down Black Mountain in fifth gear (which Respondent felt was a bad example for an instructor), and because his fuel mileage was below the Company's 6.06-mile-per-gallon (mpg) standard. Snodgrass was able to show by corroborated testimony, which was not disputed by Respondent, that the speedometer and tachometer on his tractor was not operational at the time, and he said he did know how fast he was driving. In any event, he said he was not stopped by any official or representative.

When Snodgrass was terminated by Respondent on November 17, he explained the malfunction of his speedometer to Manager Vaughn, who told him he should have known how fast he was going. Although the contract between Respondent and the Union provides that exceeding the 55-mph limit will be grounds for discharge without recourse to the grievance procedure, it is reasonably presumed that in all probability this contract provision presupposed the drivers would be guided by an operating speedometer. Common experience would suggest that, while the most experienced driver can estimate his speed (within a few miles of accuracy) at some times, it is doubtful anyone can estimate his speed within the same few miles at all times. If this were so, speedometers would hardly be necessary.

It therefore appears to me that Respondent's failure to take into consideration the reasonable and practicable factor of the lack of an operating speedometer at the time of the speeding charge clearly demonstrates that Respondent was not really concerned with proof of the charge, but, rather, with any ground, ostensible or actual, which it could use as a basis for discharging Snodgrass. This position is further confirmed when the evidence of the terminalwide union animus and Respondent's concerted pattern of unlawfully discharging employees (actual union organizers), *supra* and *infra*, is taken into consideration. It is therefore obvious that Respondent's speeding charge was a pretext and not the real reason for discharging Snodgrass.

With respect to Respondent's contention that it also discharged Snodgrass for telling trainees he drove or would drive down Black Mountain in fifth gear, the credited evidence shows that this remark by Snodgrass was said in jest, and that Respondent (Manager Vaughn) interpreted it as having been said in jest by laughing with others present. It was only in Snodgrass' absence that Vaughn relayed the remark to higher management as having been seriously made in order to further aggravate Respondent's already existing union animus. In any event, it is not shown that Snodgrass ever attempted to carry out such act and the record shows he told management he would not do that, he was just kidding.

With respect to Respondent's contention that it also discharged Snodgrass for not maintaining its fuel mileage standard, the credited evidence again demonstrates without dispute that Snodgrass' fuel mileage was better than what the truck was recorded capable of doing. No evidence was submitted to show that Snodgrass' fuel mileage was any worse than that of other drivers. In fact, if his fuel mileage was that poor, it is strange that Respondent selected him for the position of driving istructor, who is supposed to teach how to conserve fuel. Finally, it is especially noted that the fuel mileage charge occurred in October 1980, for which Snodgrass had already received a reprimand in spite of his having shown management that his mileage was better than the truck's record.

Under the above circumstances the credited evidence has clearly revealed Respondent's reasons for Snodgrass'

discharge for what they are, a contrived pretext to conceal its unlawful discharge of him. Since the real and only reason for Respondent's discharge of Snodgrass was his union activity, of which it was well aware, his suspension and discharge were discriminatory and, as such, in violation of Section 8(a)(3) and (1) of the Act. *Great Atlantic & Pacific Tea Co. v. NLRB*, 354 F.2d 707, 709 (5th Cir. 1966).

G. *Respondent's Discharge of Serviceman Michael (Mike) Green*

Michael (Mike) Green was hired for the repair and maintenance of trucks in August 1980. There were three servicemen at the time, one of whom was Dwayne Hartman, son of President David Hartman. The Cincinnati terminal could not buy parts at that time and the mechanics did the best they could to service the trucks, but the terminal manager would dispatch trucks even though they did not satisfy DOT regulations and he had been so advised. Green said he told management on several occasions to no avail that a certain truck or trucks were not roadworthy.

Green further testified undisputedly that he served on the Union's bargaining committee which negotiated the current contract in 1 week, in which contract the driver instructor position was excluded because it was felt such position was a part of management. Four days later he became a union steward. On that same day, Manager Vaughn told him to pick up the telephone, that General Manager Lloyd Harmon wanted to talk to him. He picked up the phone and Harmon said, "[c]*ongratulations or condolences, which is it*? Are you sure you want to take the job of union steward?" He said, "It could cost you your job." Green said he asked Harmon if he wanted to put that statement in writing, and the latter said, "Put Vaughn back on the line." Manager Harmon denied he made the above remarks but I was not persuaded by his denial because it is inconsistent with the tenor of the entire pattern of antiunion conduct of Respondent.

About 2 weeeks later, employees Jene Gaskins and Georgia Strump came in and told Green they were pulled off their Greensboro, North Carolina, run by Scott Wright, who was superintendent of maintenance, because of an incident in the newspapers where a female driver broken down on the road had been raped. Superintendent Wright was denying them the right to run a single driving operation. He (Green) would be forced to file a grievance on their behalf. Wright told him he did not make policy, and he (Green) said that was find, he would file a grievance. Wright then said, "Okay. I will call the Equal Employment Opportunity Commission (EEOC) and see if I can get a ruling from them." Forty-five minutes later, Wright told the girls that the EEOC said it would be a violation of their rights and he would put them back on their run. Around the same time, Green said, he had filed a grievance with the Union about female and male drivers having to live in quarters with no locks on the doors and unsanitary conditions in a trailer in Statesville, North Carolina.

On or about November 7, Green said, he was accused by Vaughn and Scott Wright of sending Tractor 58 out the day before without sufficient fuel. He denied he sent the tractor out. In fact, he said he told the driver to go to the Cincinnati Bulk Mail Center at the Cincinnati Post Office, and call back to see what Vaughn wanted to do because the tractor had an exhaust and water pump leak and he was working when they went out to get parts that day. The driver's name was Beauford McCormick and it was Manager Vaughn who sent the tractor out.

The next day Green was accused of informing Vaughn that Tractor 58 had been serviced, which Green denied. He had been off 7 days on sick leave. On that night another driver, Carol Stevens, called him at home and told him Vaughn said he needed a doctor's statement to return, and she asked him why did he get fired. He told her he did not know he had been fired. She informed him that they had somebody else working in his place down at the shop. When Green got off he called Ron Vaughn and asked him if he had been fired. Vaughn said that was a "bunch of bull," he had not been fired. However, Vaughn asked him when was he coming back, and he told Vaughn the next day. Vaughn said, "Well, there are some papers we have to straighten out." Green continued to testify as follows:

> A. As a result of the phone call, I went in the next day and as I got in my time card had been pulled out of the rack. I stood around for about two hours waiting for Mr. Vaughn to show up. He come in. I asked him what happened to my time card. He told me at that point that I had been terminated. I asked him for what. He said, "Well, there's ten reasons." "What ten reasons." He said, "The papers are being wrote up now. You will get a copy of it when I get it."
>
> Q. And he didn't mention any of the ten reasons?
>
> A. No.
>
> Q. He said they were being written up?
>
> A. He said they were being wrote up at that point, and that I would get a copy of them when he got them.
>
> Q. Did you ever get the copy?
>
> A. No, I did not.

About 6 days later there was a hearing at which Manager Vaughn, Jeff Snodgrass, and union agent Odelle Hinkle were present. Vaughn told the committee Green was fired for not putting oil in a tractor, which was 2 gallons short, and fully servicing it. Hinkle said that "was bull" and he would go to arbitration. About 3 months later, Green said, he got a call from Hinkle advising that he had worked out a deal with Respondent and Hinkle told him to go to Vaughn. He went to Vaughn the same day and the latter offered him an extra-board driver position, not a shop position, on a temporary basis to prove he was going to be a better employee if he gave up his position as union steward. Green went back to the Union and declined the job because he would be making less money and because he had done nothing wrong and should not admit guilt. At that time, fellow employee Hudson came in and apologized for signing the statement against him about insufficient oil in the tractor, which was parked on unlevel ground when the oil was checked.

In March 1981, Green further testified, the drivers called a meeting at the union hall to try to get Hinkle to resolve some of the unsolved grievances. Hinkle told Green that he had worked out a deal, and that he (Green) had had his day in court and to get the "hell out of the union hall." At that juncture, Green said, he and Snodgrass went to the National Labor Relations Board and filed a charge. When Green was shown the Company's work order dated October 24, 1980, he explained that it did not mention a complaint about a malfunctioning speedometer because he would not have so noted it unless he had repaired it.

With respect to his own work performance, Green testified that he was sent home one day because the bathroom sink fell off the wall and Manager Vaughn told him to put it back. He said he told Vaughn he could not put it back with a cutting torch and he was not the plumber. Vaughn said, "Go home." Green also testified that Deatra Hollars, secretary to Vaughn, told him that she overheard Vaughn and Wright talking, and that *Wright said he (Green) had to go.*[11] The latter statement is essentially corroborated by *Deatra Hollars* who was employed by Respondent as a secretary from July 17, 1980, until she resigned on December 13, 1980. She testified that in or around the last week in October 1980, she heard Terminal Manager Vaughn, Superintendent of Maintenance Scott Wright, and serviceman Mike Green arguing about the female drivers (Strump and Gaskins). She corroborated Green's testimony about his pointing out the civil rights of the two females. However, after that conversation, she testified, Vaughn and Wright came into the office where Superintendent Wright said Mike Green was a troublemaker and he was not going to tolerate the grievances he was filing, and he pointed towards the shop and said, "*That son-on-a-bitch has to go.*" Manager Vaughn said "*You're right.*"

Seitz testified that on November 8, 1980, he heard Mike Green tell Scott Wright he (Green) was going to do his job as union steward whether management liked it or not, he did not care. Wright said, "The matter had ended as far as I am concerned. You can get your ass the hell out of here." Flora pointed towards the door and Green said, "This is not the last you are going to hear of this. I am going to do my best as steward the way I am supposed to do it, not the way you tell me to do it. And as far as these unsafe tractors are concerned, I am calling DOT [Department of Transportation] right now." Seitz said he saw Green go to the pay telephone and pick up the phone and insert money.

The next day while in the Company's truckstop, Seitz testified, the following occurred:

> A. I asked, "By the way Scott, what was all the hollering about with you and Mike the other day." And Scott said, "Phil, that man is a complete idiot. *He's a real asshole. Do you know what he did? He called DOT on us.* Now, the company really needs that, Phil.". . .
>
> * * * * *
>
> A. "Green thinks this union is going to set company policy, and there's no way in hell that's going to happen, I'll tell you that right now." So, I said to Scott, "Mike said that he was only trying to do his job as steward." And he said, "*Well, we're just not going to have people like that around here.*" And I let the matter drop.

Hollars also testified that, in or about November, Manager Vaughn directed her to type two statements accusing Green of failing to service the trucks for a trip. One charge was low oil and the other charge was an exhaust leak. Then Vaughn asked her to call Tom Hudson and Beauford McCormick at home and ask them to come to the office and sign the charges. When they reported to the office, she said, Vaughn asked her to step out of the office while they signed. After they signed she was called back into the office and asked to make copies of the statements.

Hollars further testified that Respondent had recorders on all of the telephones and that she had told Vaughn that she felt Respondent did not treat its employees fairly. In December, she said, her mother called her at the office and told her that Standard Textile had called and wanted her to report to work the following Monday. Thereafter, on December 13, she advised Vaughn that she could not continue to work there anymore and that she was resigning to accept another job. Vaughn said her timing was good because Hartman was not very happy with the way she had been handling the timecards and told him to let her go. Hollars said she had never been previously so advised by Vaughn. However, she recalled the time when Harmon called her about some timecards or something to do with her paperwork. At that time he asked her *if Green was still complaining and causing trouble filing grievances.* She advised him that she did not know anything about union business, and he said, "*We don't need people like that working for us, he won't be much longer.*"

Discussion

It is well established by the foregoing credited evidence that, a few days after the election (May 21, 1980), Michael (Mike) Green served on the bargaining committee for the Union. Four days later he became union steward. On the same day he became steward, Respondent's general manager, Lloyd Harmon, asked Green which was in order "congratulations or condolences," and he asked him if he was sure he wanted to be steward and told him it may cost him his job with the Company. The record shows that thereafter Green became a serious and responsible steward in carrying out his duties. On one occasion he had an argument with Wright because he

[11] A large portion of Michael Green's testimony is undisputed and is therefore credited. Other portions of Green's testimony are either denied or disputed by Terminal Manager Ronald Vaughn or General Manager Lloyd Harmon. However, I credit Green's testimony in all respects, and discredit that of Vaughn and Harmon, not only because I was persuaded by their demeanor that he was telling the truth and they were not but, more particularly, because Green's account is corroborated in part by employee Phillip Seitz and former secretary to the terminal manager Deatra Hollars and because Green's version is consistent with essentially all of the credited testimony of record and the well-established antiunion climate which prevailed at the terminal.

was advocating a solution to a grievance of fellow female employees. When Green threatened to file a grievance to resolve the matter, Wright quickly resolved the dispute. However, Green nevertheless filed a grievance about insecure and unsanitary lodging quarters in North Carolina.

On another occasion around November 8, 1980, Green had an argument with Superintendent Scott Wright, at which time he told Wright he was going to call DOT about Respondent's unsafe trucks. The next day Wright told employee Phillip Seitz that Green was "an asshole," he called DOT on Respondent, and he thought that the Union was going to set company policy, but *Respondent was not going to have people like Green around.* On another occasion, General Manager Lloyd Harmon called Deatra Hollars and asked her if Green was still complaining and causing trouble filing grievances. When she told him she knew nothing about union business, Harmon said, "We don't need people like that working for us, he won't be much longer." Also, with respect to Green's grievance filings, Superintendent Wright said, "That son-of-a-bith has to go," and Manager Vaughn said, "You're right."

On or about November 7, Respondent suspended Michael Green purportedly because he sent a truck out which had not been fully serviced. A few days later, Respondent discharged Green but refused to give him any specific reasons therefor. Green filed a grievance and Terminal Manager Vaughn told the committee Green was discharged for failing to add sufficient oil in a tractor and fully service it. Respondent thereafter advanced varied and sundry reasons why it discharged Green. However, neither the credited testimonial, documentary, nor circumstantial evidence of record supports Respondent in this regard. On the contrary, the specified evidence relating to dischargee Green, as well as the evidence of record as a whole as it relates to the other dischargees herein, clearly establishes that Respondent (particularly Manager Vaughn) seized upon the circumstances in an effort to justify Green's discharge. Moreover, the evidence is unequivocal that Respondent's discharge of Green was solely motivated by his union activity as steward for the Union. This conclusion is further supported by the terminalwide union animus and Respondent's several 8(a)(1) and (3) unlawful conduct herein found.

Thus, the General Counsel has established a *prima facie* case demonstrating that Respondent's discriminatory discharge of Green was solely motivated by his protected union activity in violation of Section 8(a)(3) and (1) of the Act. *Great Atlantic & Pacific Tea Co. v. NLRB*, 345 F.2d 707, 709. The facts that Vaughn failed to give Green a reason for his discharge at the time of separation and later told the committee he ws discharged for failing to fully service trucks reveal that this latter reason was an afterthought and pretext.

H. *Respondent's Discharge of Truckdriver Phillip Seitz*

1. Interrogation

Phillip K. Seitz undisputedly testified that on or about May 16, 1980, he was called into the office of Jack Flora. Fellow truckdriver Jene Gaskins was there and Manager Jack Flora asked them what they thought about the Union and there was no response. *Flora then said, "[T]his union isn't going to get you people anything more as far as salary goes, because the Postal Service is not going to pay so much. And if you people strike, somebody's going to pull those trailors. . . . If the National Guard has to do it. If the strike is not resolved you are all going to end up out on the street without a job, because we'll close the doors.* Seitz continued to testify as follows:

> A. He said, "Well, the voting will be on Monday, so you people get out to vote." Then, I briefly stated some things that needed to be corrected at Norbar, and I felt that the union would correct them. One of the things, I believe—oh, yeah, we had to buy our own uniforms, for one thing. And the other thing was, there have been times where the drivers have used their own personal money to fix tractors and the delay in reimbursing was sometimes rather lengthy.
>
> Q. Were you on any particular committee with the union in October after the election was over?
>
> A. Yes, sir.
>
> Q. What committee were you on, if any?
>
> A. I was on the union bargaining committee.

On November 5, 1980, Seitz said, he fell between a tractor frame and twisted his back. Thereupon he completed forms (G.C. Exhs. 2 and 3). He also completed an accident report for Vaughn on January 8, 1981. When he visited his doctor on December 9, his doctor advised him that he would have to be off from work until at least April 6, 1981, or possibly the first week of January on a limited basis. He thereupon called Vaughn and told him what the doctor said. Vaughn said he would have to check with Harmon. Later that day, Vaughn informed him that Harmon said he was not to return to work until he could run a full schedule. Vaughn asked when was he coming back and he said the doctor said April at the earliest. Vaughn said, "I'll tell you what Phil, please try to let me know 2 weeks in advance before you come back," and he said, "I will." Seitz testimony was not disputed in this regard.

Seitz also testified that he received a certified letter (G.C. Exh. D) from the Union on March 4, 1981. On or about March 6, he said, he called the Cincinnati terminal and asked Harmon why he received a letter about poor fuel mileage. Harmon said it was a mistake and that Hinkle evidently sent a letter to everybody. He also asked Harmon why he had not heard from his workmen's compensation claim and Harmon said he did not know because the Company had done everything it was supposed to do. Seitz thereupon went to the Workmen's Compensation Bureau and examined his file and found letters (G.C. Exh. E, F, and G).

Seitz attended the opening of the current proceeding on April 15, 1981, and was in the presence of Respondent's supervisory officials, none of whom said anything to him about his position with the Company or his plans to return, except, possibly, to give him the time of day.

The record shows that General Counsel's Exhibit H is a doctor's supplemental report which states, "Light work on July 6, 1981 and regular work on October 5, 1981." All of the above exhibits were a part of Seitz' workmen's compensation file which either himself or his employer (Respondent) has a right to see at any time upon signing a card and showing proper identification. Seitz also found in his file certain responses made by his employer and decided to file a claim with the Ohio Industrial Commission. On June 8, 1981, he had a hearing which Vaughn attended and his claim was allowed through July.

General Counsel's Exhibit I is a letter to Seitz dated May 14, 1981, advising that company policy forbids former employees on its premises without prior authorization from management. It was signed by Ronald Vaughn.

General Counsel's Exhibit J is also a letter from Respondent dated May 14, 1981, which reads as follows:

> Dear Mr. Seitz:
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> Upon my return from an out-of-town trip I saw in our terminal a notice stating that you intend to run for the position of union steward here.
>
> I was surprised to see that notice because, as we told you in a previous letter, a copy of which we enclose for your reference, you had resigned from the company on April 15.
>
> I trust that letter will clear up any confusion in your mind concerning your status with the company.

The letter was signed by Terminal Manager Vaughn.

General Counsel's Exhibit K is also a letter from Respondent dated April 15, 1981. In essence, the letter states that Respondent was recently informed by the Workmen's Compensation Bureau that its records indicated a Dr. Weaver authorized Seitz to return to work on April 8, 1981; and that, inasmuch as Respondent had not heard from Seitz, Respondent assumed that he had found a position elsewhere, or for his own reasons was no longer interested in employment, and, therefore, his employment was terminated because Respondent deemed his silence a resignation. This letter was also signed by Terminal Manager Vaughn. All three letters were mailed together.

Seitz undisputedly testified that he had never received Respondent's initial letter of which General Counsel's Exhibit K is a copy, and *which incidentally is dated the same day that he (Seitz) attended the hearing in this proceeding and saw management officials.* He testified that he did receive a certified letter containing the three letters on May 16, 1981. In any event, Seitz testified that he went to the terminal on May 12, 1981, to carry a notice for the Union which stated, "Those wishing to run for Steward sign here"; and that his name was on the list. He asked the secretary (Judy) if he could speak to Vaughn but she informed him that he was not there. He asked her when would he return and she said she did not know. He then gave her the notice and asked her to post it on the bulletin board, which she did.

Seitz testified that upon his receipt of the May 16, 1981, letter he called the terminal immediately and asked Vaughn what was this nonsense all about. Vaughn said, "[D]idn't you get that letter we sent you on April 15," and he said, "[Y]ou know I never got it because you never sent it." He told Vaughn that he had "trumped-up it all up, had written the letters on the same day, dated one the 15th of April and sent them all in the same envelope." Vaughn said the Company would not do that. They then had a discussion about the Company's living up to the contract and Seitz willingness to enforce the contract. With respect to his condition and availability for work, Seitz said he told Vaughn the dates for his return could be verified. Vaughn said, "[N]o, we have to go what we have got"; that Respondent had a letter from his doctor and had talked to the Workmen's Compensation Bureau; and that the Workmen's Compensation Bureau was contesting his claim.

Seitz said he decided to go and examine his file at the Workmen's Compensation Bureau. He explained to Vaughn that any letter that he had from the doctor indicating a date for his return was a tentative date. Since he was not able to get any change of position by Vaughn with respect to his retention in the employ of Respondent, Seitz thereafter filed a grievance, on which no action has been taken by the Union to date. Seitz also obtained permission from Respondent to enter its premises on May 22, at which time he spoke with Vaughn again regarding his employment status. At that time, Seitz showed him the letter that gave an estimated return for light work on July 6 under his doctor's signature. He requested Vaughn to return his name to the bulletin board as an employee. Vaughn stated that he had to go on what he had and maintained his position that Seitz was no longer an employee.

In defense of its position, Respondent cited the union contract, which provides that an employee will be granted medical leave for illness and/or disability for a period of 30 days when the request for such is supported by a physician's statement, and that such leave will be extended upon an application supported by a physician's statement regarding the continuance of the condition, with no loss of seniority.

Seitz, however, stated that he did not recall Respondent's asking him for any supporting statements. He acknowledged that he did not call Respondent on April 6 and advise it that he would not be returning because that was a tentative date. He said the only time he was asked for supporting data was on May 22, at which time he showed Vaughn his letter which is General Counsel's Exhibit H. Seitz testified that Respondent's Exhibit P, a letter regarding a January 7, 1980, doctor's visitation, was correctly dated, and that the written date of "1981" was put there by Respondent.[12]

[12] After examining Resp. Exh. P, I find that it was correctly dated January 7, 1980, and that the year thereof was altered to 1981 in longhand by someone. Moreover, I credit Seitz' testimonial explanation that the letter was actually referring to a doctor's visit by him on or about January 7, 1980, for another injury. Respondent was therefore using and/or relying upon a letter which was not relevant to Seitz' current injury, and is therefore discredited.

2. Discussion

The foregoing credited evidence regarding the discharge of Phillip Seitz makes it clear that Seitz was also interrogated by Manager Flora about his union interest prior to the union election. The evidence is equally clear that during their discussion Seitz told Flora what employee problems he thought the Union would be able to correct. Hence, Respondent (Flora) had actual knowledge that Seitz was in favor of the Union and Respondent's union animus is well established by its remarks during the discussion. In October 1980, Seitz served on the Union's bargaining committee. With respect to the injury Seitz sustained on the job on December 5, 1980, the undisputed and credited evidence shows that he visited his doctor on December 9 and was advised he could return to work on a limited basis the first on January and on a full-time basis by at least April 6, 1981. Seitz so informed Respondent. However, Respondent told Seitz not to return to work until he could work full time and to give it 2 weeks' notice prior to returning. Seitz agreed and completed and submitted to Respondent the appropriate accident form on January 8, 1981.

Seitz filed a claim with the Workmen's Compensation Bureau. On March 4, 1981, he received a letter from Respondent about poor fuel mileage. When he called to inquire about the letter, he was advised that the letter was probably sent to every driver. When Seitz asked Manager Harmon why had he not heard from his workmen's compensation claim, Manager Harmon said he did not know because the Company had done everything it was supposed to do.

Seitz' claim file contained a physician's supplemental report which said, "Light work on April 6, 1981 and regular work on October 5, 1981." This letter and Seitz' claim file are accessible to Respondent too. On April 15, 1981, Seitz attended the trial in this consolidated proceeding and saw members of management who in turn saw him. On May 12, 1981, Seitz had a notice posted on Respondent's bulletin board requesting persons interested in running for steward to sign it. Seitz had signed the notice himself. On May 16, 1981, he received three letters in one envelope. One letter was dated May 14, 1981, advising that Respondent was surprised to see his name on the notice because it had previously notified him in a letter dated April 15, 1981, that it had assumed he resigned since he did not report for work on April 6, 1981, and it had not heard from him. Thereupon, Respondent terminated his employment.

It is obvious from the systematic chain of events in Seitz' case, as it was in the cases of the other dischargees herein, that Respondent knew, and did not have any reasonable information upon which to conclude that Seitz had resigned or obtained work elsewhere. The record evidence shows that Seitz was advised by Respondent not to return to work until he could assume a regular workload. His claim file contained a letter stating that the most recent date for that eventuality was October 5, 1981. If Respondent had any misgivings about the dates, it is strange it did not contact him. Seitz did not receive the letter dated April 5, 1981, and I credit his testimony in this regard because Seitz did receive the letters mailed on May 16 at his same address.

When the time of the letter mailed on May 16, 1981, is compared with the time (May 12) Seitz had his name on Respondent's bulletin board as a candidate for union steward, it is reasonably inferred that the notice bearing Seitz' name caused Respondent's well-established antiunion fever to rise to the point that it was provoked to terminate his employment. This is especially so when Respondent's history of union animus is recalled, along with its other 8(a)(1) and (3) unlawful conduct found herein.

Consequently, under the above circumstance, the evidence is more than ample to conclude that Respondent's discharge of Phillip Seitz was motivated solely by his union activity, and was therefore discriminatory and in violation of Section 8(a)(3) and (1) of the Act. Respondent's contention that Seitz failed to apprise it of his condition or that it assumed he found employment elsewhere was a pretext contrived to conceal its unlawful discharge of him.

I. *Analysis and Conclusions*

I have herein found that Respondent discharged truckdrivers Charles Burge and Howard Baumer on June 27, 1980, solely because they engaged in union activities which resulted in the Union's victory in the election on May 21, 1981. Respondent failed to establish any reason for their discharge because the evidence clearly shows that the dischargees' delay on their June 27 trip was due to well-explained reasons beyond their control. Likewise, although Respondent contended it discharged Lloyd Tucker on July 11 or 12, 1980, because he was speeding in a rainstorm and did not drive with due care for the road circumstances, it was not able to substantiate this contention. Respondent was not present nor did it have any witnesses or highway report, but concluded Tucker was at fault in view of his very reasonable and practicable explanation. Moreover, the damage caused by the accident was very minor (about $15) and it was shown Respondent did not uniformly enforce its accident policy even when some drivers had multiple and more serious accidents.

Under the above circumstances, it is clear that the only substantiated reason Respondent discharged Burge, Baumer, and Tucker was for their successful union activities, of which Respondent was fully aware.

The overwhelming evidence also demonstrates that Respondent's contended reasons for the discharges of Michael Green and Phillip Seitz were exposed at the trial as a contrivance to carry out its well-established objective, to terminate all of the leading union organizers, whom Respondent acknowledges it knew. In each case, Respondent failed in its proof to show that Green sent out a truck that was not roadworthy and/or not fully serviced, or that Seitz did not apprise it, and it did not learn, of his capacity to return to work full time on April 6. At most, Respondent's contended reasons constituted a pretext, which is not a legitimate reason at all.

Perhaps Respondent became nearest to a reason for the discharge of an employee in the case of Jeffrey Snodgrass. Here, Respondent made a sophistocated effort to rid "itself of Snodgrass by promoting him to a position it deemed supervisory in character, so as to enable it to dis-

charge him at will, or on slight provocation." However, the evidence exposed its plan by a witness (Hollars) who was privy to the plan. Moreover, the charge on which Respondent predicated its discharge (speeding) was not well established because the driver (Snodgrass) was driving, at the time of the charge, with a speedometer that was not working. Respondent probably knew beforehand, but certainly learned after the charge, that the speedometer was not operational at the time.

I have been persuaded by the evidence that this was a failure of proof because I do not believe Respondent's testimony, which clearly demonstrated a continued contrivance to terminate all of the leading union organizers. However, even if Snodgrass was in fact a supervisor, as I did not find, or even if this case is deemed one of dual motive on the part of Respondent, I nevertheless find the discharge discriminatory and unlawful for the following reasons: As hereinbefore found, Snodgrass was purposely promoted to the driving instructor position so that he could be terminated by Respondent for his union activities. Additionally, even if Respondent's charge of speeding is deemed established, as I do not find, Respondent has nevertheless failed to overcome the General Counsel's *prima facie* case by establishing that it would have discharged Snodgrass even if he were not known to have engaged in union activities *Wright Line*, 251 NLRB 1083 (1980).

Finally, Respondent violated Section 8(a)(1) of the Act by undisputedly telling an employee (Larry Walton) not to file for unemployment compensation and implying that he should withdraw such claim.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. They are unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices warranting a remedial order, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 protected rights, in violation of Section 8(a)(1) of the Act, by interrogating employees about their union interest or sympathies, by threatening employees with bodily harm for telephoning fellow employees about union activities, by giving employees the impression their union activities were under surveillance by Respondent, by threatening employees with discharge for accepting the position of steward for the Union, by threatening employees to discharge a union steward for performing the duties of a steward, and by asking employees to drop charges against management filed with the Board; by telling employees not to file for unemployment compensation and implying that they should withdraw such claims; that Respondent discriminatorily suspended and/or discharged employees for engaging in protected concerted and/or union activities, in violation of the Act, the recommended Order will provide that Respondent make all unit employees suspended and/or discharged whole, as of the date of their suspension, or the date they accepted a new position by contrivance of Respondent, for any loss of earnings within the meaning and in accord with the Board's decisions in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977), except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from in any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

Upon the basis of the above findings of fact and upon the entire record of this case, I make the following:

CONCLUSIONS OF LAW

1. Norbar, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Truckdrivers, Chauffeurs and Helpers Local 100, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees about their union interest or sympathies, Respondent violated Section 8(a)(1) of the Act.

4. By threatening employees with bodily harm for telephoning employees about union activities, Respondent violated Section 8(a)(1) of the Act.

5. By giving employees the impression their union activities were under surveillance by Respondent, Respondent violated Section 8(a)(1) of the Act.

6. By threatening employees with discharge for accepting the position of steward for the Union, Respondent violated Section 8(a)(1) of the Act.

7. By threatening employees to discharge an employee because he performed the duties of a steward, Respondent violated Section 8(a)(1) of the Act.

8. By asking employees to drop charges filed against Respondent with the Board, Respondent violated Section 8(a)(1) of the Act.

9. By threatening employees to close the terminal, Respondent violated Section 8(a)(1) of the Act.

10. By telling employees not to file for unemployment compensation and implying that they withdraw such claims, Respondent violated Section 8(a)(1) of the Act.

11. By discriminatorily suspending and/or discharging employees, or promoting them to discharge them because they engaged in protected concerted or union ac-

tivities, Respondent violated Section 8(a)(3) and (1) of the Act.[13]

12. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

[13] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).